

## SUPPORTING STATEMENT

30 C.F.R § 75.1702, Program to Prevent Smoking in Hazardous Areas (Pertains to underground coal mines.)

### A. JUSTIFICATION

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 877(c), and 30 C.F.R. § 75.1702 prohibits persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act and § 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. The Mine Act and the standard further require that the mine operator submit the program plan to MSHA for approval. The purpose of the program is to insure that a fire or explosion hazard does not occur.

A cigarette lighter was found to be the cause of a mine explosion that took the lives of 13 men in December 1981 and there have been many other similar occurrences in the past. As recently as May 1994, a mine explosion resulted in two fatalities, serious injuries to other survivors and severe damage to the mine. MSHA's investigation determined that the explosion's most likely source of ignition was the open flame of a cigarette lighter or match. The information collection requirements contained in 30 C.F.R. § 75.1702 help to ensure that miners are protected for these unnecessary hazards.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The mine operator uses the information to conduct the program. MSHA uses the information to determine the mine operator's compliance with the standard and that a program is developed and implemented to prevent smoking in hazardous areas.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

No improved information technology has been identified that would reduce the burden. The programs to prevent smoking, prepared for submittal to and approval the MSHA District Manager, are narrative descriptions of the frequency, locations and methods of searches

conducted to prevent the intentional or inadvertent carrying of smoking materials into an underground coal mine. Such narrative plans can be prepared using Personal Computers and word processing programs and submitted via E-mail, where the mine operator has the capability of affixing transmittable authorization signatures or where the E-mail or facsimile is followed by a signed hard copy. However, neither the use of nor absence of access to electronic media significantly effect the burden imposed by the standard.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

There is no similar or duplicate information that could be used. Program approvals are granted on a mine-by-mine basis. Where State agencies require such programs, MSHA will usually accept the same program.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This information does not have a significant impact on small businesses or other small entities. However, MSHA has made available on our web-site various sources of information, such as "Technical Assistance," "Best Practices," and an Accident Prevention" site. To assist with compliance, these provide tips and general information on a number of various topics.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The mine operator need only submit the program once for approval.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information' confidentiality to the

**extent permitted by law.**

While there is no specific requirement that records be maintained for more than three years, all underground coal mines must have an approved smoking materials search plan in effect during the entire time they are operating. MSHA requires this program as one of the preliminary plans which must be submitted for approval in accordance with 30 CFR 75.1721(b)(9) prior to commencing the extraction of coal (30 CFR 75.1721 - Opening of new underground coal mines, or reopening and reactivating of abandoned or deactivated coal mines, notification by the operator; requirements.) Once submitted and approved, a revised program is only required where the mine ownership changes or the program proves to be inadequate to prevent the carrying of smoking articles underground. This collection of information is otherwise consistent with the guidelines in 5 C.F.R. § 1320.5.

**8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

In accordance with 5 CFR 1320.8(d), MSHA will publish the proposed information collection requirements in the Federal Register, notifying the public that these information collection requirements are being reviewed in accordance with the Paperwork Reduction Act of 1995, and giving interested persons 60 days to submit comments.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

MSHA has decided not to provide payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality provided to respondents.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Hour Burden

MSHA Coal Mine Safety and Health maintains a computer data base to track the submittal and approval of mandatory plans. The programs required to be submitted under 30 C.F.R. § 75.1702 are among the mandatory plans tracked in the Mine Plan Approval Data Base. In FY 2003 there were 180 new plans and 4 revised plans submitted under this standard. MSHA safety specialists estimate that it takes a mine operator approximately 30 minutes (0.5 hour) to develop an average program.

$$184 \text{ plans} \times 0.5 \text{ hour per program} = 92 \text{ hours}$$

Hour Burden Cost

Salaries used in this estimate were taken from the U.S. Coal Mine Salaries, Wages, & Benefits - 2002 Survey Results. MSHA estimates that the programs are prepared by the technical professional staff of coal mines who earn \$58.96 per hour.

$$92 \text{ hours} \times \$58.96 \text{ per hour} = \$5424$$

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the**

information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

MSHA estimates that there are no additional costs associated with submittal of these plans. MSHA's experience is that these plans are relatively straight forward, requiring minimal effort, and are nearly always submitted in conjunction with other mandatory plans such that no separate and identifiable mailing or processing costs are incurred by the mine operators.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

There are approximately 733 underground coal mines affected by the standard. However, once a program is approved it normally remains in effect for the life of the mine. The number of annual responses would, therefore, be limited to programs developed for new mines or mines changing ownership. MSHA's records show that there are approximately 180 new underground coal mines opening each year and 4 established coal mines changing ownership each year. It is estimated that it takes MSHA District Office personnel earning \$28.73 per hour about 30 minutes (0.5 hour) to review and approve an average program.

$$184 \text{ programs} \times 0.5 \text{ hour} \times \$28.73 \text{ per hour} = \$2,643$$

**15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

MSHA's estimates of burden hours and costs associated with this standard recognizes that when mine properties are opened, reopened, reactivated or new mine properties open an initial program of searches for smoking material must be submitted for MSHA District Manager approval or that when existing operations change ownership and/or significantly alter their legal identity, revised mandatory plans is required. Therefore, a decline in the total number of plans submitted (188 to 184) has resulted in a reduction of 2 burden hours (from 94 to 92).

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**16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

MSHA does not intend to publish the results of this information collection.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

There are no forms associated with this information collection on which to display the OMB

number and expiration date.

Agency: Mine Safety and Health Administration

Title: Program to Prevent Smoking in Hazardous Areas

OMB Number: 1219-0041

Frequency: On occasion

Affected Public: Business or other for-profit

Number of Respondents: 184

Estimated Time Per Respondent: 30 minutes

Total Burden Hours: 92

Total Annualized capital/startup costs: 0

Total annual costs (operating/maintaining systems or purchasing services): 0

Description: 30 CFR §75.1702 Requires operators of underground coal mines to develop programs to ensure that any person entering the mine does not carry smoking materials, matches or lighters.

**Federal Mine Safety & Health Act of 1977,  
Public Law 91-173,  
as amended by Public Law 95-164**

# An Act

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Federal Mine Safety and Health Act of 1977".*

SEC. 317. (c) No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

# **Title 30**

**Parts 1-199 Mineral Resources  
Department of Labor  
Mine Safety and Health Administration**

## **Code of Federal Regulations**

### **30 CFR § 75.1702**

#### **Smoking; prohibition.**

##### **[STATUTORY PROVISIONS]**

No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

[35 FR 17890, Nov. 20, 1970, as amended at 47 FR 14696, Apr. 6, 1982; 60 FR 33719, June 29, 1995]